

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Core Communications, Inc.)	
Petition for Forbearance Under)	WC Docket No. 03-171
47 U.S.C. § 160(c) from Application of the)	
ISP Remand Order)	

MCI COMMENTS

WorldCom, Inc. d/b/a MCI (MCI) hereby submits its comments on the Petition for Forbearance filed in the above-captioned proceeding by Core Communications (Core) on July 14, 2003. In its petition, Core requests that the Commission forbear from applying the provisions of the ISP Remand Order¹ to the exchange of ISP-bound traffic between telecommunications carriers. Core's petition addresses, in particular, the impact of the ISP Remand Order's "new market" and "growth cap" provisions, arguing that those provisions put CLECs at a disadvantage.

It has been fifteen months since the D.C. Circuit remanded the ISP Remand Order to the Commission.² Further delay in addressing the Court's concerns would be contrary to the Commission's responsibilities; pursuant to Section 402(h) of the Communications Act, the Commission has the obligation, upon remand from a court, to "carry out the judgment of the court," and in doing so "to forthwith give effect" to the court's judgment.³

¹ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Order on Remand and Report and Order, CC Docket No. 96-98, released April 27, 2001 (ISP Remand Order).

² WorldCom, Inc. v. FCC, 288 F.3d 429 (D. C. Cir. 2002)

³ 47 U.S.C. § 402(h).

Prompt action on the D.C. Circuit’s remand of the ISP Remand Order is essential because the D.C. Circuit completely rejected the section 251(g) “carveout” theory that provided the sole basis for the ISP-bound traffic compensation regime adopted in the ISP Remand Order. Consequently, the Commission’s failure to act on the remand leaves CLECs operating under a set of rules – including the rates for ISP-bound traffic, the “new markets” bill and keep provision, and the growth caps – that are without basis in law. Moreover, because the ISP Remand Order failed to address any of the remand issues raised by the D.C. Circuit in Bell Atlantic,⁴ those issues also remain to be resolved to the Court’s satisfaction by the Commission.

As Core points out in its petition, the ISP Remand Order has damaged the development of local competition. Among other things, the ISP Remand Order preempted the significant progress that was being made in carrier-to-carrier negotiations regarding intercarrier compensation, including substantial reductions in reciprocal compensation rates and new rate structures, e.g., rate structures that differentiated between “in balance” and “out of balance” traffic.⁵ To a great extent, the compensation arrangements reached as a result of those carrier-to-carrier negotiations reflected tradeoffs made by parties to those agreements. Unfortunately, the ISP Remand Order chose the \$0.007/min rate from one of those agreements – between Level 3 and SBC – and imposed it on the rest of the industry without regard to, among other things, the fact that the Level 3/SBC agreement reflected unique factors not applicable to the industry as a whole.⁶

⁴ Bell Atlantic Telephone Companies v. FCC, 206 F.3d 1 (D.C. Cir. 2000)

⁵ See, e.g., ISP Remand Order at ¶ 85 n.158.

⁶ Letter from Richard S. Whitt, WorldCom, to Ms. Magalie Roman Salas, FCC, CC Docket No. 99-68,

The Commission's failure to act promptly on D.C. Circuit's remand of the ISP Remand Order leaves the industry in limbo as existing interconnection agreements expire and new agreements are negotiated. The D.C. Circuit's rejection of the ISP Remand Order's section 251(g) theory, coupled with the D.C. Circuit's prior rejection of the 1999 Declaratory Ruling's section 201 theory,⁷ leaves the Commission with no choice but to finally concede that ISP-bound traffic is subject to section 251(b). Nonetheless, the Commission's failure to conclusively resolve the status of ISP-bound traffic, coupled with continued application of the \$0.007/min rate and other features of the plan adopted in the ISP Remand Order, significantly distorts carrier-to-carrier negotiations pursuant to section 252.

Moreover, the Commission's retention of the ISP Remand Order's ISP-bound traffic scheme impedes progress towards a unified intercarrier compensation regime. Although the ISP Remand Order weakly contends that the federal three-year transition plan for ISP-bound traffic is the first step towards such a unified intercarrier compensation regime, it is clear that the ISP Remand Order is in fact at odds with the goal of a unified intercarrier compensation regime. First, by singling out ISP-bound traffic for special treatment and thus creating yet another category of intercarrier traffic with its own rates and terms, the ISP Remand Order made the intercarrier compensation regime more, not less, complex. Second, by driving only ISP-bound intercarrier compensation rates towards bill and keep, while leaving rates for access and other forms of intercarrier compensation at inflated levels, the Commission only increased the rate

April 9, 2001, at 6.

⁷ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed

differentials that are at the root of the “regulatory arbitrage” that the ISP Remand Order purports to address. Finally, by driving intercarrier compensation rates towards “bill and keep” for the only type of traffic for which the incumbent LECs were net payors, while leaving the rates for all other types of traffic (for which the incumbent LECs are net payees) at inflated levels, the Commission eliminated a significant incentive for the incumbent LECs to take an active role in the development of a more rational unified intercarrier compensation regime.

For the reasons stated herein, the Commission should act promptly on the D.C. Circuit’s remand of the ISP Remand Order, and should confirm that ISP-bound traffic is subject to section 251(b)(5) of the Act.

Respectfully submitted,
WORLDCOM, INC. d/b/a MCI

/s/ Alan Buzacott

Alan Buzacott
1133 19th Street, N.W.
Washington, DC 20036
(202) 887-3204

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